STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

PATRICK LAWRENCE IDZIAK,

Defendant-Appellant.
_____/

Michigan Supreme Court No. 137301
Court of Appeals No. 285975
Circuit Court No. 07-00044 FC

KENT COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

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REPLY BRIEF

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Defendant-Appellant answers, "Yes".

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STATEMENT OF FACTS

Defendant Patrick Idziak pled guilty to armed robbery and felony firearm on January 31, 2007 before the Honorable Donald A. Johnston III in the Kent County Circuit Court. On March 6, 2007, he was sentenced to prison terms of 12 to 50 years, with a consecutive two-year term for the felony firearm.

The offense took place on November 23, 2006, and Mr. Idziak was arrested on November 28, 2006. He was in jail from that date to his sentencing on March 6, 2007. The only mention of sentence credit was the statement that the sentences were to be consecutive to the prior offenses for which he had been on parole at the time of this offense. ST 14. No jail credit was given for any of the time Defendant spent in jail before the sentence was imposed. See Judgment of Sentence, attached.

On September 6, 2007, Defendant filed a motion for resentencing or to withdraw his plea. The motion was heard and denied by the trial court on May 23, 2008.

The motion was denied on that date. See order, attached. Defendant filed an application for leave to appeal in the Court of Appeals which was denied by order on July 25, 2008. He sought leave to appeal in this Court; leave was granted on January 28, 2009. Defendant's brief was filed timely. He received the People's brief on March 31, 2009, after it was filed and served by mail on March 27, 2009.

ARGUMENT

I. APPELLEE KENT COUNTY IS INCORRECT IN ITS ANALYSIS OF WHY DEFENDANT IDZIAK AND OTHERS SIMILARLY SITUATIONED IS NOT ENTITLED TO CREDIT ON HIS NEW MINIMUM TERM.

Standard of Review. The standard of review in this case is de novo. *Cardinal Mooney High School v MHSAA*, 435 Mich 75, 80; 467 NW2d 21 (1991).

Discussion. Defendant urges this court to reject the reasoning of the prosecution as put forth in its brief for reasons discussed below.

A. The prosecutor urges this Court to rely on previous case law which holds thatany jail credit for time incarcerated prior to conviction and sentence on an offense committed while on parole is applied to the "previous term."

Throughout this case, Defendant has asserted that prior interpretations of the credit statute, MCL 769.11b, applied in conjunction with the consecutive sentencing statute for those who commit crimes while on parole, MCL 768.7a(2), and MCL 791.234 (administering sentences for parolees returning to prison with a new sentence) are incorrect. The error has been the assumption of both sentencing and reviewing courts that jail credit for time between the arrest on a later offense and sentencing on that same offense is applied to the previous minimum term. The parties are in agreement that sentences have both minimum and maximum components, and that these components are added together when a parolee is returned to prison after a subsequent offense. See, e.g., Plaintiff-Appellee's Brief on Appeal ("Plaintiff's Brief"), 6-9; 18. However, the State urges this Court to rely on previously decided cases, noting that Defendant's argument "is not new." *See e.g., id,* 8-10, comparing it to arguments

advanced in *People v Chattaway*, 18 Mich App 538, 543; 171 NW2d 801 (1969) (the credit statute is to be liberally interpreted).

The State is incorrect in its assessment. The present argument differs from those previously considered by the appellate courts on this question. Prior cases have not acknowledged and factored in a crucial fact: when an inmate is released on parole by the Parole Board, a non-judicial agency, the inmate's minimum term on that offense is expired. If it were not, the Board would have no jurisdiction to determine whether parole release is appropriate. See MCL 791.234 (1); MCL 791.235. In other words, an inmate is eligible for parole *only* when his minimum term has passed.

Prior decisions *do not take this factor into account.* This is obvious. The cases' reasoning is as follows: when a parolee commits a new offense, he is jailed on a parole detainer and "serves jail time on the paroled offense." *People v Seiders*, 262 Mich App 702 at 707 (2004), cited in Plaintiff's Brief at 9. The common belief, repeated over and over, is that somehow this jail credit is meaningfully applied to the prior sentence. However, if, as the parties agree, all sentences have the components of minimum and maximum terms, and when a parolee is released, he is serving only the maximum of the prior sentence, because the minimum has necessarily expired, one must ask, where does credit for time spent in jail on a later crime go on the prior minimum term? The prior minimum has passed and is no longer there. This question is the critical distinction between the question before the Court today and earlier cases dealing with the exact problem which have been left unaddressed. See Defendant-Appellant's Brief on Appeal ("Defendant's Brief"), e.g., 10-16.

B. There is no authority for finding legislative intent to punish parolees more severely than those who are not on parole when they commit crimes.

The People urge this Court to inquire into the intent of lawmakers for support of their position. See e.g., Plaintiff's Brief, 10-11. Appellee says, for example, that it is "axiomatic" that a court must construe at statute in accord with the intent of the Legislature. *Id.*, at 10. Appellee continues on, positing that if the Legislature "intended the statute to apply to every person who does not actually post a bond while awaiting resolution fo a criminal charge, regardless of any unrelated hold that would keep him incarcerated in spite of the bond, it could have simply omitted that phrase entirely. . . " *Id.*

But it didn't. In fact, the Legislature could have written many things, or omitted many things, about credit into or from its language, but it did not choose to do so. And because the statute is clear on its face, it is inappropriate to speculate on what the Legislature might have meant or should have meant. "A cardinal rule of statutory construction is that courts may not speculate as to the probable intent of the Legislature beyond the words employed in the statute. A word or phrase in a statute is to be given its plain and ordinary meaning. . . . When the language of a statute is clear and unambiguous, judicial construction is neither required nor permitted. Such a statute must be applied, and not interpreted, since it speaks for itself." [*In re Schnell*, 214 Mich App 304, 309-310, 543 NW2d11 (1995), quoted in *People v Tolbert,* 216 Mich App 353, 359; 549 N.W.2d 61 (1996)]. See also, Karkkainen, *"Plain Meaning": Justice Scalia's Jurisprudence of Strict Statutory Construction,* 17 Harv. J.L. & Pub. Pol'y 401, 415-416;

442-50 (1994). Here, the plain language of the credit statute, MCL 769.11b, states that anyone convicted of a crime who cannot post bond will receive credit on the sentence, meaning both the minimum and maximum terms. The plain statutory language does not state that all persons except parolees will receive credit. Nor does it state that only those without money will receive credit. Since a parolee who commits a crime is being held in jail *only* because he has committed that later crime (which triggers issuance of a parole hold) there is a nexus between the new crime and being in jail which requires that credit be applied under the plain language of the statute. See *People v Tilliard,* 98 Mich 17, 21; 296 NW2d 180 (1980) ("unable to furnish bond" requirement of MCL 769.11b is met when an MDOC detainer is issued for a crime committed after release from prison"). The People are wrong in their assertion that a defendant is not being held for post-parole criminal behavior and that, accordingly, the credit statute does not apply. Plaintiff's Brief at 14.

II. KENT COUNTY IS CORRECT IN ASSERTING THAT THE MDOC'S ADMINISTRATION OF A PAROLEE'S SENTENCE IS NEITHER A CONSTITUTIONAL NOR A STATUTORY VIOLATION, BUT INCORRECT IN CONCLUDING THAT THE DISPARITY THAT IMPACTS OFFENDERS UNDER THE CURRENT APPLICATION OF THE CREDIT STATUTE IS NOT A CONSTITUTIONAL VIOLATION.

Standard of Review. The standard of review in this case is de novo. *Cardinal Mooney High School v MHSAA*, 435 Mich 75, 80; 467 NW2d 21 (1991).

Discussion. Defendant agrees with the prosecutor's assertions that the Michigan Department of Corrections administers sentences according to statute. Plaintiff's Brief at 20-22. Creating and imposing sentences is the distinct judicial function of Michigan's trial courts, pursuant to the separation of powers doctrine. *Tolbert, supra* at 361. The MDOC administers these sentences, according to law and internal policy, Plaintiff's Brief at 20-22. The Parole Board, the parties agree, determines when a person is suitable for conditional release on parole after the minimum term has expired. *Id.* at 21. Thus, administration of the sentence is a completely separate function from determination of an appropriate and fair sentence.

Defendant Idziak suggests that concern with administration of the sentence after parole violation is not the crux of the problem in this case. The question here concerns only the proper application of MCL 769.11b by the State's trial courts, and whether parolees who commit crimes should get jail credit pursuant to the plain meaning of the statute, as discussed in the previous section. Contrary to the prosecution's comment that parolees should be treated more harshly because of their repeat offender status,

there is nothing in the relevant statutes that provides for this conclusion. Plaintiff's Brief at 27. Until there is law to support a more onerous treatment of this class of offenders, imposing the *de facto* added punishment of loss of jail credit is unfair. It also chills the exercise of the right to trial by criminal defendants. Although the Amicus Brief on Behalf of the Michigan Department of Corrections implies that this is constitutionally acceptable, no law is cited for this proposition. *Id.* at 13. Defendant certainly is not aware of authority which supports such a result. The inherent unfairness discussed in Argument II of Appellant's Brief is a compelling reason for this Court to finally remedy same. By ordering courts to grant credit on the new minimum term for parolees, credit is given to these offenders on both the minimum and the maximum terms, as it is to all other offenders.

RELIEF REQUESTED

Defendant respectfully requests that this Court grant the relief requested.

Respectfully submitted,

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Date: April 4, 2009